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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-72381; File No. SR-NYSEARCA-2014-65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Add an Additional Requirement to Qualify for Step Up Tier 3

June 12, 2014.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 30, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to proposes to [sic] amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to add an additional requirement to qualify for Step Up Tier 3. The Exchange proposes to implement the fee change effective June 1, 2014. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add an additional requirement to qualify for Step Up Tier 3, which was introduced into the Fee Schedule effective February 1, 2014.⁴ The Exchange proposes to implement the fee change effective June 1, 2014.

Step Up Tier 3 in the Fee Schedule is applicable to an ETP Holder, including a Market Maker, that on a daily basis, measured monthly, directly executes providing volume ("Adding ADV") during the billing month that is both (i) at least 0.20% of U.S. consolidated average daily volume ("U.S. CADV") for the billing month and (ii) at least 0.125% taken as a percentage of U.S. CADV for the billing month over the ETP Holder's December 2013 Adding ADV taken as a percentage of U.S. CADV in December 2013 ("Baseline % CADV").⁵ For example, if U.S. CADV during the billing month is 7 billion shares, an ETP Holder's Adding ADV during the billing month would first need to be at least 14 million shares (i.e., at least 0.20% of U.S. CADV

⁴ See Securities Exchange Act Release No. 71503 (February 6, 2014), 79 FR 8524 (February 12, 2014) (SR-NYSEArca-2014-13).

⁵ U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early. Transactions that are not reported to the Consolidated Tape are not included in U.S. CADV. An ETP Holder with zero Adding ADV in December 2013 (e.g., a firm that became an ETP Holder after December 2013) is treated as having Baseline % CADV of zero for purposes of Step Up Tier 3.

for the billing month). If U.S. CADV in December 2013 was 6 billion shares and an ETP Holder's December 2013 Adding ADV was 6 million shares, the ETP Holder's Baseline % CADV would be 0.10% (i.e., the ETP Holder's December 2013 Adding ADV taken as a percentage of U.S. CADV in December 2013). The ETP Holder's Adding ADV during the billing month would therefore need to be at least 0.225% of U.S. CADV for the billing month (i.e., Baseline % CADV of 0.10% plus at least 0.125%). This would equate to at least 15.75 million shares of Adding ADV, which would be a "step up" of 9.75 million shares.

A qualifying ETP Holder is eligible to receive a credit of \$0.0004 per share for (i) Adding ADV in Tape A securities during the billing month taken as a percentage of U.S. CADV in Tape A securities in the billing month in excess of the Baseline % CADV in Tape A securities and (ii) Adding ADV in Tape C securities during the billing month taken as a percentage of U.S. CADV in Tape C securities in the billing month in excess of the Baseline % CADV in Tape C securities.⁶ This credit would be in addition to the ETP Holder's Tiered or Basic Rate credit(s); provided, however, that such combined credit may not exceed \$0.0034 per share.

The Exchange proposes that, in addition to the existing two requirements described above, to qualify for Step Up Tier 3 an ETP Holder would be required to directly execute Adding ADV during the billing month that is at least 40% over the ETP Holder's Baseline % CADV as a percentage of U.S. CADV for the billing month.⁷ Continuing with the example above, if an ETP

⁶ Orders that provide liquidity in Tape B securities count toward the ETP Holder's qualification for Step Up Tier 3, but such orders are not eligible for a credit under Step Up Tier 3. The Exchange's Fee Schedule includes a "Tape B Step Up Tier" that provides for a similar credit of \$0.0004 per share only for orders in Tape B securities that provide liquidity.

⁷ An ETP Holder with zero Adding ADV in December 2013 (e.g., a firm that became an ETP Holder after December 2013) would be treated as having a Baseline % CADV of zero for purposes of the proposed new Step Up Tier 3 requirement. This proposed new

Holder's Baseline % CADV was 0.10%, the ETP Holder's Adding ADV during the billing month would need to be at least 0.14% of U.S. CADV for the billing month. If U.S. CADV for the billing month was 7 billion shares, the ETP Holder's Adding ADV during the billing month would need to be at least 9.8 million shares (i.e., 0.14% multiplied by 7 billion). For an ETP Holder like this, with relatively low Baseline % CADV, this new requirement would not result in a new threshold that it would need to reach, because the 9.8 million shares would be less than the two existing required thresholds (i.e., 14 million shares and 15.75 million shares, respectively).

However, and for further example, if the ETP Holder's Baseline % CADV instead was 0.60%, the ETP Holder's Adding ADV during the billing month would need to be at least 0.84% for the billing month. If U.S. CADV for the billing month was 7 billion shares, the ETP Holder's Adding ADV during the billing month would need to be at least 58.8 million shares (i.e., 0.84% multiplied by 7 billion). Under the existing two requirements, this ETP Holder would be required to have Adding ADV during the billing month of 14 million shares or 50.75 million shares, respectively. This proposed new requirement would therefore result in the ETP Holder being required to have Adding ADV of 8.05 million shares greater than the higher of the two existing requirements and an overall "step up" of 22.8 million shares over its December 2013 Adding ADV.

No other changes to Step Up Tier 3, or the corresponding credit, would result from this proposed change.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

requirement would therefore have no effect on such an ETP Holder. However, the existing two requirements would continue to apply.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The existing requirement of Adding ADV during the billing month that is at least 0.20% of U.S. CADV establishes a minimum for any ETP Holder in order to qualify for Step Up Tier 3. The existing requirement of Adding ADV during the billing month of at least 0.125% taken as a percentage of U.S. CADV for the billing month over the ETP Holder's Baseline % CADV establishes a minimum amount that the ETP Holder must "step up" during the billing month, based on U.S. CADV during the billing month. In other words, as U.S. CADV during a particular billing month increases, the Adding ADV required of an ETP Holder would similarly increase (conversely, required Adding ADV would decrease if U.S. CADV during a particular billing month decreases). The proposed new requirement of Adding ADV during the billing month that is at least 40% over the ETP Holder's Baseline % CADV as a percentage of U.S. CADV for the billing month is reasonable because it would establish a minimum amount that each ETP Holder must "step up" during the billing month, but based primarily on the ETP Holder's own activity during the baseline month of December 2013.

The Exchange believes that this proposed new requirement is also reasonable because it would further contribute to the goal of Step Up Tier 3 – namely, encouraging ETP Holders to send additional orders to the Exchange for execution in order to qualify for an incrementally

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

higher credit for such executions in Tape A and Tape C securities that add liquidity on the Exchange.¹⁰ In this regard, the Exchange believes that this may incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The proposed new requirement is also reasonable because the level at which it would be set, i.e., 40%, is consistent with a threshold within the Fee Schedule that similarly provides for specific pricing based on an ETP Holder's volume in the billing month compared to a particular "baseline month."¹¹

The Exchange also believes that the proposed additional requirement to qualify for Step Up Tier 3 credit is equitable and not unfairly discriminatory because it would incentivize ETP Holders to submit orders to the Exchange and would result in a credit that is reasonably related to an exchange's market quality that is associated with higher volumes. Moreover, like existing pricing on the Exchange that is tied to ETP Holder volume levels, the Exchange believes that the proposed qualifying threshold for Step Up Tier 3 is equitable and not unfairly discriminatory because it would be available for all ETP Holders, including Market Makers, on an equal and non-discriminatory basis. It is also equitable and not unfairly discriminatory that an ETP Holder with zero Adding ADV in December 2013 (e.g., a firm that became an ETP Holder after December 2013) would be treated as having a Baseline % CADV of zero for purposes of the proposed Step Up Tier 3 because, as discussed above, the existing two requirements would continue to apply and would already require a higher Adding ADV from such an ETP Holder than if the Exchange applied a small, artificial Baseline % CADV for the ETP Holder.

¹⁰ See supra note 4 at 8525.

¹¹ See, e.g., the "Routable Order Tier" within the Fee Schedule, pursuant to which an ETP Holder must provide, in part, an ADV of liquidity during the billing month across all Tapes that is equal to at least the ETP Holder's provide liquidity across all Tapes during a "baseline" month, plus 40%. See also Securities Exchange Act Release No. 69926 (July 3, 2013), 78 FR 41154 (July 9, 2013) (SR-NYSEArca-2013-67).

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹² the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change will encourage competition, including by attracting additional liquidity to the Exchange, which will make the Exchange a more competitive venue for, among other things, order execution and price discovery. In general, ETP Holders impacted by the proposed change may readily adjust their trading behavior to maintain or increase their credits or decrease their fees in a favorable manner, and will therefore not be disadvantaged in their ability to compete. More specifically, an ETP Holder could qualify for Step Up Tier 3 by providing sufficient adding liquidity to satisfy the proposed new volume requirement.

Also, the Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets. In this regard, the Exchange notes that existing pricing tiers of other exchanges similarly provide for credits for market participants that provide certain levels of liquidity on those exchanges.¹³

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular

¹² 15 U.S.C. 78f(b)(8).

¹³ See, e.g., the "Investor Support Program" under NASDAQ Stock Market, LLC ("NASDAQ") Rule 7014.

venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2014-65 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2014-65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

¹⁶ 15 U.S.C. 78s(b)(2)(B).

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2014-65 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill,
Deputy Secretary.

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¹⁷ 17 CFR 200.30-3(a)(12).